IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4389 OF 2006

Jethmal Mohanlal Khiwansara ...Petitioners

Versus

Sunil Vasudev Chhadde ....Respondents

N.P.Shimpi for the petitioners.

Gauri Godse for the respondents.

CORAM: S.C.DHARMADHIKARI, J.

27.11.2007

P.C. :

1. This is an application for amendment made by the Petitioner Plaintiff in the Suit being Special Civil Suit No. 944 of 2002 on the file of Learned 10th Ad-hoc Addl.District Judge, Pune.

2. The suit was filed for recovery of monies initially. Now, during the pendency of the suit, an application for amendment has been made incorporating relief of possession of the premises.

3. Even prior to that amendment, the instant application was filed claiming that the respondent defendant has inducted some persons in the premises as his tenants and therefore it would be appropriate and to avoid multiplicity of proceedings so also for complete adjudication that these persons be impleaded as party defendants. The application is rejected on the ground that there is no privity of contract between these persons and the plaintiff. The reasons for rejecting the amendment are these :-

> "7. While deciding the application under Order 6 Rule 17 o the Code of Civil Procedure, the Court has to see as to whether the nature of the suit will be changed or whether the cause of action will be changed after allowing the proposed amendment. While granting or refusing to grant amendment application, the Court is not required to go into the merits of the averments sought to be added. In present case, the plaintiff is claiming the suit amount from the persons shown in the amendment application. There is no any contention that there is or there was any privity of contract between those persons and the plaintiff at any time. There is no prayer of possession of suit property from the defendant or those persons and therefore, the proposed amendment deserves to be rejected and hence the following order :

4. Now, the impediment of no prayer of possession

is removed. Prayer for possession is indeed incorporated. Insofar as the findings on the privity of contract, in my view, they go to the merits of the case. It was not necessary to discuss this aspect at the stage of amendment. The delay could have been compensated by directing the petitioner to pay cots to the respondent/original defendant.

5. For the reasons that are set out in the application for amendment and considering that the Trial Court has failed to apply the liberal principles while deciding such application, the order under challenge is incapable of being sustained. It is accordingly quashed and set aside. Application Exhibit-20 stands allowed and the amendment is granted in terms thereof. Amendment to be carried out within a period of two weeks from today, subject however, to the petitioner paying costs quantified at Rs.10,000/- to be paid within a period of two weeks. Upon proof of costs being tendered, amendment to be carried out and amended plaint be served on the parties within four weeks thereafter. Written Statement to be filed within six weeks of the amended copy of plaint is served Petition

disposed off. No costs.

sd/-

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